

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on April 1, 2003 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 6, 3/24/2003; HB 7, 3/24/2003;
HB 363, 3/26/2003; HB 8, 3/24/2003;

SB 435, 3/19/2003; SB 485,
3/26/2003
Executive Action: HB 6; HB 8; HB 363; SB 474; SB 473;
SB 485; SB 476; SB 347; SB 435; SB
446; SB 333

HEARING ON HB 6

Sponsor: REP. JOHN WITT, HD 89, Carter

Proponents: John Tubbs, Department of Natural Resources
SEN. DALE MAHLUM, SD 35, Missoula

Opponents: None

Opening Statement by Sponsor:

REP. JOHN WITT, HD 89, Carter, opened on HB 6, an act appropriating \$4 million to the **Department of Natural Resources and Conservation (DNRC)** for renewable resource grants. The **Long Range Subcommittee** held hearings on these projects. A list was passed out showing the allocation of funds for various projects. **EXHIBIT (fcs69a01)**

Proponents' Testimony:

John Tubbs, DNRC, said the list (Exhibit 1) is 40 funded projects and an additional four projects contingently funded if any of the 40 projects fails to move forward. They are funded in rank order. The first \$100,000 is in planning grants. There is another \$220,000 reserved for emergency grants with specific allocations for Hysham and Carterville irrigation districts. \$3.67 million is allocated to the rest of the projects. The gray funding line is where the money runs out.

SEN. DALE MAHLUM, SD 35, Missoula, spoke in favor of project #9 which is a grant of \$100,000 for the Missoula County Corridor on Mullan Road for a sewer project. The area has grown significantly, and there are a lot of five and ten acre ranchettes. This is a project that will grow due to population. There is a big golf course going in at the end of the project. This money will help with some of the engineering. Public involvement has been very heavy and the project has been controversial. He asked for support.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **Mr. Tubbs** how the department sets their priorities.

Mr. Tubbs advised their ranking system is based on the statutory objectives of the program. They look at technical feasibility, the financial package, and how the projects conserve, manage, protect, or develop Montana's renewable resources. A team of about eighteen, a combination of staff, employees, and consultants do that. The department ranked the projects, and the Governor concurred with those rankings.

SEN. MCCARTHY asked him to explain emergency grants.

Mr. Tubbs advised because this is a two year cycle, and the legislature can't be available to make quick decisions, the department has always received \$125,000 to fund emergencies that come up during the biennium that will either create loss of property or result in legal liability for the project's sponsor. It doesn't have to be a renewable resource project. Typically, they receive those applications during the interim, and the director acts on those proposals. The department reports those to the **Legislative Finance Committee**.

SEN. MCCARTHY asked if health would be the prime emergency, or what would trigger an emergency.

Mr. Tubbs said they look at health issues. Generally, it is the area of drinking or waste water systems. The statute spells out loss of property or legal liability.

SEN. MCCARTHY asked if the maximum they can give on a grant is \$100,000 or is it just an arbitrary number to make the money go further this year.

Mr. Tubbs advised it is somewhat arbitrary; there is no statutory restriction, but since the inception of the program over twenty years ago, the department has recommended a maximum of \$100,000. There are no constraints on the legislature.

SEN. BILL TASH asked about the prison ranch and whether funding that was a result of reappropriating some of the other projects.

Mr. Tubbs explained a number of projects were reduced. Three of those are flood plain mapping projects. That gave the department flexibility to work with those three counties and to fund the most priority areas. The prison dam is an important high hazard dam on the ranch. The department didn't rank it that high, primarily because it is a structural fix that doesn't save or develop any more water. The other reason it ranked lower is that

the public will never use the facility, and it doesn't benefit the greater good other than the prison population.

SEN. TASH noted he sat on the Prison Ranch Advisory Committee for some years, and this is part of an ongoing project. It is a high hazard dam that could be threatening not only properties below the prison, but properties as far as Deer Lodge and it will be good to complete that project.

SEN. KEITH BALES asked about the monies for this.

Mr. Tubbs explained the money is a \$4 million statutory allocation from the Resource Indemnity Trust interest money. There is a \$100 million trust that has been built up over the last thirty years with mineral taxes. The \$100 million goal was achieved in 2002. Those monies are invested through the **Board of Investments**. The earnings from those investments are distributed to about five accounts and distributed among grant programs.

SEN. BALES said in the original bill there were some projects in the list that were amended out. He wondered what happened to those projects.

Mr. Tubbs advised the first one that was removed from the ranking was a grant request from the Blackfeet Tribe called Oki Mamii (Hello Fish). It was a small grant for the school at Browning to develop an educational unit on water resources, riparian area, and water habitat on the Blackfeet Reservation. The committee had a concern that opening this program up for educational purposes would open up a huge list of grantees. **REP. DAVE KASTEN** agreed to sponsor separate legislation to fund that project in **HB 628**. The only ones removed from the list at that point were lower on the priority list. Butte-Silver Bow Local Government Basin Creek Dam 1 and 2 was struck primarily because they had a TSEP grant and it was a structural fix. Hill County Beaver Creek Dam Outlet was struck from the bill because the project isn't ready to move forward.

SEN. BALES asked if the list of projects in the bill were the original grants, and then, through the testimony, problems were found with each one and they were dropped.

Mr. Tubbs indicated that is true, but the **Long Range Planning Committee** decided what was appropriate to fund.

SEN. TRUDY SCHMIDT asked what happened to Black Eagle on page 5, line 17.

Mr. Tubbs stated it was recommended for funding, but was never in the funding. It was based on proposals, and when the committee found how many projects they could fund, they went down another four and deleted every other project from the bill. The department put them in the bill so that the committee had the full list of technically feasible projects to consider. If they had received \$100,000 they could move forward.

SEN. SCHMIDT said it didn't necessarily mean there was something inappropriate or wrong with their project, etc.

Mr. Tubbs advised generally, it would be technical issues.

Closing by Sponsor:

REP. WITT closed on the bill.

HEARING ON HB 7

Sponsor: **REP. JOHN WITT, HD 89, Carter**

Proponents: **John Tubbs, DNRC**

Opponents: **None**

Opening Statement by Sponsor:

REP. JOHN WITT, HD 89, Carter, opened on **HB 7**, a an act appropriating money to the **Department of Natural Resources and Conservation** for reclamation and development grants. \$2.4 million from the RIT Trust Fund has been allocated for reclamation and development grants. This is down from \$3 million as a result of legislation passed in the special session. A list had been handed out showing the allocation of these funds to the various reclamation and development projects. In committee they focused on projects by local governments, and this is reflected in the amendments. **EXHIBIT(fcs69a02)**

Proponents' Testimony:

John Tubbs, DNRC, advised the list (Exhibit 2) shows the projects in **HB 7**. The first column on the left identifies the original ranking based on the department's recommendations. The second column shows how they came out of the House. Part of the reason the projects were reordered was **HB 177** would have further reduced grant funding for these programs to about three or four projects. That bill ended up being tabled. In anticipation of something like that occurring, the committee reordered it such that some

local government projects would be ranked. Otherwise, it would have been primarily state agencies. The department is very proud of this program. It is mineral reclamation with mineral reclamation tax dollars. They are plugging oil and gas wells, cleaning up abandoned mines, etc.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. SCHMIDT asked about the Growing Carbon project moving up in ranking and what project lost out in place of that project moving up.

Mr. Tubbs indicated the Growing Carbon program is carbon sequestration, for CO2 gas emissions worldwide. There is a Montana Carbon Sequestration Coalition that is leading efforts to capture that new market which is essentially selling carbon credits. The Governor's office initiated the grant as a sponsor to the coalition, which is five conservation districts in Northwestern Montana. The original ranking reflects the department's doggedness on mineral reclamation and they also had some statutory priorities. In committee, the Governor's office as well as coalition members did a wonderful job in supporting their project and got the committee excited about the potential of Montana taking a leading role in capturing some of the revenues associated with large industrial companies buying the rights to grow trees. The money will also be used to research the ability to store carbon in agricultural soils through proper tillage and farm practices. It is a huge emerging market and this is Montana's attempt to get into that market. **{Tape: 1; Side: B}** The monies became available because the department testified to the committee they could fund those projects with surface mine dollars and did not need the reclamation development grant.

SEN. LINDA NELSON wondered why they were given \$300,000 and if it was because they did such a great presentation.

Mr. Tubbs advised they requested \$300,000 and the committee restored their request. The department had recommended half of that.

SEN. ED BUTCHER asked if the project is growing trees to collect carbon. He expressed concern about the water aquifer projects way down the list from a growing trees project to capture carbon. He realized this may be a great scientific endeavor, but there doesn't seem to be a shortage of growing trees. He asked why they would bypass water projects for that kind of priority.

Mr. Tubbs indicated the projects **SEN. BUTCHER** referred to were the Judith Basin Conservation District and Fergus County Conservation Districts which are plugging free flowing wells in that part of the country. There are 100 wells that are not properly capped in the area and are draining the aquifer. The Carbon Dioxide Coalition's first project was done on the Flathead Reservation where they planted 300 acres of trees. That credit was sold to a London based firm. The reason the coalition is involved is money. There is a commodity market established on the stock exchange for carbon credits. They are trying to position themselves as the financial intermediary between farmers and ranchers nationwide. They are leading the nation in setting up contracts with land owners for growing trees and crops that capture carbon. The market wants increments of 100,000 tons of carbon credits to sell to industrial polluters. In order to accumulate 100,000 tons of carbon, they must work with a lot of farmers and a lot of people that grow trees. The coalition is trying to position themselves as the group that bridges the gap between what the market needs to sell and dealing with one rancher and the easement. It is the financial investment they're after as much as growing trees. There have been several grants for aquifers in Judith Basin, and they are good projects. The committee thought long and hard, and ultimately this was what they recommended.

SEN. BUTCHER asked how long before those projects are likely to get money.

Mr. Tubbs said it would take one of the above projects to not move forward.

SEN. BUTCHER said he had 4,000 acres of Ponderosa Pine they are planning to clear. He wondered if they didn't clear it out, if there is some benefit to keeping this scrub pine around.

Mr. Tubbs said possibly. The coalition can contract with a landowner to plant new trees.

SEN. BUTCHER wondered about paying \$1.6 million for planting trees, when there are people who are busily cutting trees to get rid of them. As far as he is concerned, the trees are nothing but a weed in their operation. He is in the process of clear cutting 4,000 acres of pine trees. He said there seemed to be a level of idiocy.

CHAIRMAN TOM ZOOK advised him to visit with **REP. WITT** after the hearing as he is very knowledgeable.

SEN. MCCARTHY wondered who supervises after the grant is given to the community so that the terms of the grant are fulfilled.

Mr. Tubbs indicated their department writes a grant agreement with the community that spells out the scope of the work and a budget. They get quarterly reports from the grantees, and hope to be able to make at least one trip out to look at the project. At the end, the grantee submits a final report. It is a disbursement-based process. They incur the expenses, and then bill the department with the proper receipts that are signed and dated. Those are reviewed and then the reimbursement is made for those expenses. They don't give out \$300,000 and then find out later what has happened.

SEN. MCCARTHY said essentially, the department is a line of credit, and **Mr. Tubbs** said exactly.

SEN. MCCARTHY said she assumed the roundhouse project was a result of spills from the trains. She wondered how long this project would be.

Mr. Tubbs said they had been planning for several years, and doing the site investigations, etc. They are prepared to move forward with the cleanup and removing material.

SEN. MCCARTHY asked if the rest of the projects will complete within the cycle.

Mr. Tubbs replied most do, although there is a year lag with some projects getting started. Local governments have to get regulatory agency approvals which slows some of the projects. Local governments are ready to move. Generally, they hire a professional engineer to guide them.

SEN. MCCARTHY asked how many might be eligible to come back in two years for additional grants.

Mr. Tubbs advised they see some repeat customers. The Board of Oil and Gas is a perennial customer, as there are thousands of abandoned oil wells. He didn't think they would see them off of the list for ten years. Fergus County has received a couple of grants and they are a long ways from capping all the free flowing wells in that area. **DEQ** has about 260 mines. In Sheridan County there are probably one or two hundred oilfield brine projects. That is why he thinks these grant dollars are important. They are making slow and steady progress.

SEN. MCCARTHY asked who improperly capped the wells.

Mr. Tubbs replied generally, the land owner or a gas and oil development company. Some caps just rusted off and exposed the pipe. Others never did have a valve. A well for exploration was punched and then given to the landowner as a stock marsh.

BEN. BALES asked about asterisks on the entries for the Board of Oil and Gas conservation on the green sheet (Exhibit 2).

Mr. Tubbs advised it shows the priorities. Coming into the session, they had \$4 million in statutory priorities. In August they estimated they would have about \$5 million in grants from oil and gas taxes, \$3 million in interest earnings, and they would have funded all of the projects. The special session took the oil and gas tax revenues and put it in the general fund and reduced the \$3 million in RIT interest earnings and another \$7 million dollars in order to solve debt service within the RIT account. As a result, **HB 554** sponsored by the committee, was passed by the legislature to temporarily eliminate these priorities. The asterisks were projects that were statutorily prioritized, but because of passage of **HB 554**, there is total flexibility in this biennium to fund those projects or not. It was done because of the budget cuts.

SEN. BALES mentioned **HB 6** which also used interest from the RIT funds. He asked if **HB 554** affected the funds for **HB 6**.

Mr. Tubbs advised **HB 6** does not have any statutory priorities, so it is not the same issue. From a budget standpoint, the monies that were transferred to the general fund were out of the reclamation and development grants account, not the renewable resource account. That is why these grants come into play. In the special session the grants in this account were transferred to the general fund for two years. The Budget Office and the committee worked to figure out a way to fund the projects that could be funded.

SEN. BALES commented that those taxes were paid to clean up oil and gas. He felt the priorities were removed from the wrong spot.

SEN. TASH asked if there is a correlation between the eligible grant applicants and the area where reclamation occurs.

Mr. Tubbs said reclamation is a difficult area for local governments to participate in because of the rigorous protocols in the Superfund Act. He is an advocate of local governments getting good projects. He felt they have been scared away in the area of reclamation. All the dollars in the grant can't change that problem, because it is a regulatory issue.

SEN. NELSON thought the Governor's office is a strange place for the Growing Carbon program. It seemed to her it should be under the **Department of Agriculture** or **DNRC**. She wondered if there would be an office within the Governor's office to oversee this.

Mr. Tubbs indicated the Governor's office is just a sponsor. When the Coalition first contacted him, he recommended they work with the five conservation districts that are their membership. They wanted the prestige of the Governor's office. They've leveraged the \$300,000, since they applied, to an anticipated \$8 million in grants. They feel it was because of the Governor's office that they got the attention they got. Montana was the only state in the nation invited to sit at the table.

SEN. NELSON thought it is fine the Governor's office has supported this, but asked who will actually manage this program.

Mr. Tubbs said one of the Governor's office employees will get the duty of reporting the expenses to him. Mainly it will be **Ted Dodge**, an NRCS employee who spearheaded the Growing Carbon project. He is the one who works directly with the Governor's office. Primarily it is just a pass through grant to the Coalition.

SEN. JOHNSON asked if the credits gained in Montana are usable any place in the world. **Mr. Tubbs** answered they are. **SEN. JOHNSON** asked if they wanted more credits in Chicago or New York, would they buy them for that reason. He wondered if pollution in those areas would then go up. **Mr. Tubbs** said under the Kumamoto protocol there is a cap. They don't want to increase the total amount of carbon emissions. In the intermediate period from now and when technology completely catches up to the CO2 issue, they will be able to maintain their current levels of pollution. Europeans are buying the credits. A group of industrial companies in the United States are doing a pilot project. Currently, the Europeans and Asians are more ahead on this issue, because they agreed to the Kumamoto protocols. President George Bush made a strong statement that he would ask our nation's industrial polluters to volunteer for this type of a credit program.

SEN. BALES thought carbon sequestration has a lot of potential, and he thought it needs to be done. He wondered if there was another program under which it could have had a higher priority and been funded.

Mr. Tubbs said out of their programs this was probably the closest.

SEN. BUTCHER asked about state land and if the state gets credit for all the acres of trees growing on state land, or if it has to be fresh planted trees.

Mr. Tubbs felt the state could enter into carbon sequestration credit easements. One difficulty is the forty-year lease limitation on state lands. Currently, the market wants to see an eighty-year lease.

SEN. BUTCHER wondered about the possibility of harvesting mature trees and planting new trees, and if that can be done under these types of agreements or if the tree has to sit there until it dies.

Mr. Tubbs said trees can be harvested at the end of eighty years, which in Montana would be only ten to twenty years longer than what would be done anyway. There are some places in western Montana where trees really grow. But in most areas, it takes eighty years for a tree to reach commercial size. **State Lands** is most excited about land that was burned in the fires of 2000. There are tens of thousands of acres that the state does not have the money to plant. They might be able to do forestry recovery and get a credit for doing that under this program.

Closing by Sponsor:

REP. WITT closed on the bill. He referred to **SEN. BUTCHER'S** question and pointed out on line 30, the \$300,000 grant is a match for a \$9 million loan from the Department of Energy with \$2 million up front. With state lands of Montana and other lands that are available for this type of project, he believed millions of dollars could be generated for the state of Montana plus in the private sector.

HEARING ON HB 363

Sponsor: **REP. ROY BROWN, HD 14, Billings**

Proponents: **Chuck Swysgood, Director, Office of Budget and Program Planning**
Todd Lovshin, MEA-MFT
Tom Schneider, Montana Public Employees Association

Opponents: **None**

Opening Statement by Sponsor:

REP. ROY BROWN, HD 14, Billings, opened on **HB 363** which would remove reserve requirements for the old fund. The bill, originally, took the 10% extra reserve from the old fund of Workers Comp. The old fund was to solve some Workers Comp problems in the early nineties. It has been closed, no new people moving into the system, and claims are tailing off. The **Legislative Audit Division** advised there was an additional 10.2% in the fund over and above what is needed to pay out the remaining claims, so that was added to the bill. They made a projection of what additional funds would be available in 2004 and 2005. There was \$9.1 million from the extra 10% reserve in the old fund, and another \$9.2 million in excess of adequately funded claim liability, and for the years 2004 and 2005 there was \$8 million. The total is \$26.4 million. The Budget Director's office would like to amend the bill so future excess reserves after 2005 go to the general fund. With the transformation of this bill, it is a difficult vote for some, but the logic is if they are going to take a portion of this, they might as well take it all. They are in difficult times, with difficult choices. The old fund is a very different fund than the new State Fund. The old fund has no new claims coming in, there are claims in process, and they are being fulfilled. There are few chances for surprises as they go along.

Proponents' Testimony:

Chuck Swysgood, Director, Office of Budget and Program Planning, advised the bill is important to the overall budget picture. He clarified the issue of the extra money amended into the bill in the House. The excess reserves are based upon the review of liabilities by the actuary. Those excess monies that are available in 2005, would have gone back to the new fund but will go into the general fund. He addressed the amendments they requested. **EXHIBIT(fcs69a03)** Past 2005, the reserves are going to dwindle. Any excess reserves after the actuary looks at the liability will continue to flow to the general fund in future years.

Todd Lovshin, MEA-MFT, urged support of the bill.

Tom Schneider, Montana Public Employees Association, appeared in support of the bill.

Opponents' Testimony: None.

Informational Witnesses:

Nancy Butler, Montana State Fund, advised the State Fund was separated into two entities on July 1, 1990. The New Fund was

for claims going forward and operates solely from premium dollars they collect. The old fund is for claims before July 1, 1990, and is funded through the remaining assets from a payroll tax that was put on employees, employers, and the self-employed in the state. The old fund tax ended in 1998. There are approximately 1500 claims remaining in the old fund, going out to 2038. With this bill, money will remain in the old fund to handle and pay the claims on a discounted basis as long as they will last. Their interest in the bill has been in understanding how to administer it.

Questions from Committee Members and Responses:

SEN. JOHNSON asked if there weren't enough money left after this amount or any amount was taken, who would be responsible for those claims.

Ms. Butler advised if there is a shortfall, the general fund is responsible.

SEN. JOHNSON said they could just as well take the whole thing and worry about it as they go along.

Ms. Butler said that would be the legislature's decision.

SEN. JON TESTER recalled there was a certain dollar figure for these monies in the Governor's budget, and asked how much.

Director Swysgood believed there was \$9.2 million in 2003, \$4.7 in 2004, and about \$3.6 in 2005. This bill contains \$9 million more in 2003 due to the 10% **REP. BROWN'S** bill originally addressed.

SEN. TESTER asked if all but \$9 million is already dedicated in the Governor's budget.

Director Swysgood advised that about \$17 million of the \$26 million was already in their budget.

SEN. EMILY STONINGTON said she was trying to track where the money was going. On page 2, this fiscal year \$1.9 million will go to the State Library Equipment Account, the **University System**, and **DPHHS**.

Director Swysgood indicated that is the result of actions in the special session when the \$4 million was taken.

SEN. STONINGTON asked if this was backfilling that money.

Director Swysgood advised the language is showing where that part of the excess reserves went to previously. There was \$13 million of excess reserves in 2003, and \$4 million of it was taken during the special session.

SEN. STONINGTON restated that this fiscal year \$9.2 will transfer to the general fund plus the additional \$3.5 million to the general fund to mitigate the cost of workforce reductions.

Director Swysgood thought that was from an amendment put into the bill in the House that pays for the cost of **HB 360**, the early retirement bill.

REP. BROWN indicated the \$12 million would return \$18 million in savings. The net is \$6 million positive to the general fund. The initial cost to reduce the workforce is about \$12 million. When the workforce is reduced and they take their early termination, there is an \$18 million savings. The net of the two is about \$6 million.

SEN. STONINGTON restated there is \$12 million taken in this year to pay for the workforce reduction, and then in subsequent years there is \$4.3 million and \$3.8 million transferred to the general fund. **REP BROWN** said that is correct.

CHAIRMAN ZOOK invited **Director Swysgood** to comment.

Director Swysgood advised he was not familiar with the bill and didn't have those figures. He recalled **HB 363**, **HB 360**, and **HB 13** all play a part in the overall picture. **REP. BROWN'S** bill originally only had \$9 million in FY 03 of the 10% requirement in statute for the old fund. The Budget Office amended his bill for another \$9 million for FY 03 plus \$4 million for FY 04 and \$3 million plus for FY 05. The total amount of money in **REP. BROWN'S** bill is a little over \$26 million. He recalled when the bill was being discussed and the language was put on in **House Appropriations** that \$18 million of the 2003 money would pay the cost of **HB 360**. The other two amounts of money left in the bill were dedicated to pay the shortfall in **Corrections**. The savings generated from **HB 360** revert back to the general fund to pay for the pay plan increase.

SEN. STONINGTON said there is not \$18 million in this fiscal year in the bill.

REP. BROWN said on page 2, line 7, the 10% additional reserve has been stricken. That represents \$9 million.

SEN. STONINGTON said on page 3, it says the remainder shall go to the state general fund, but it doesn't indicate there is \$18 million going to pay for **HB 360**. She wondered where the \$6 million net comes from.

REP. BROWN said his understanding was \$12 million in the bill is needed to pay for the early termination packages, which will result in \$18 million savings to the state. The net is \$6 million.

SEN. STONINGTON said her understanding is the \$6 million net is a reduction in workforce of 400 jobs in the state. She said she spoke with **Larry Fasbender, Department of Justice**, who said there are 30 jobs being taken out of his department with no corresponding reduction in responsibility. She asked if that is true.

REP. BROWN said that was nothing he could answer.

SEN. STONINGTON said she was trying to understand the net \$6 million. There is \$12.7 million in this bill to pay for the reduction in workforce which is the early retirement bill of **REP. DAVE LEWIS**. She understood the additional \$6 million comes from a workforce reduction of about 400 jobs. In the **Department of Justice** it will be 30 jobs with no corresponding reduction in responsibility.

CHAIRMAN ZOOK explained the workforce reduction of 400 is needed in order to make this thing work. The workflow is something they will have to deal with.

SEN. BALES asked about the language in the bill that earmarks the money for the workforce reduction and what happens if **HB 360** doesn't pass or is amended. He wondered if there should be some contingency language in the bill to put the money in the general fund if **HB 360** doesn't pass.

REP. BROWN said he hoped that would be covered on page 3, line 2 where it says the remainder to the general fund.

SEN. TESTER asked **Director Swysgood** if the \$17 million in the Governor's budget was dedicated to the workforce reduction or another area in the budget.

Director Swysgood advised it was dedicated to getting them through the \$230 million deficit.

SEN. TESTER asked if the Governor's office supports the workforce reduction bill.

Director Swysgood indicated not in it's current form.

SEN. JOHN ESP asked if the language on page 3, lines 8 and 9 allows for flexibility.

REP. BROWN said it is tied to the workforce reduction. He thought it could be a little more flexible.

SEN. BALES asked what "unreserved designated fund" means.

Taryn Purdy, Legislative Fiscal Division, said it is an accounting term. Unreserved means it is not set aside or unavailable. Several sessions ago, there was an amount set aside in the fund balance for a particular purpose. It was not spent for that purpose. If an amount is set aside, there is a certain amount in the fund balance that was equal to what something was going to cost. It didn't give them authority to spend the money, and it didn't mean the state of Montana couldn't spend the money, but it was looking forward and having at least that much available in case they needed to spend it.

CHAIRMAN ZOOK said it was designated but not dedicated.

SEN. RICK LAIBLE asked about the amount of claims in the old fund. **Ms. Butler** stated about 1500 claims are open. **SEN. LAIBLE** asked about the value of those. **Ms. Butler** said discounted, about \$90 million. **SEN. LAIBLE** asked what is the fund balance. **Ms. Butler** indicated it was about \$133 million in 2002. **SEN. LAIBLE** asked if the \$90 million in claims includes the reserves, or are the reserves in addition to that. **Ms. Butler** said \$90 million was set aside for the claims, and there was an additional 10% set aside. The 10% requirement is being removed. *{Tape: 2; Side: B}* **SEN. LAIBLE** said with \$90 million in claims, there is \$40 million over and above the claims. This bill takes out \$26 million, and he felt there would still be an adequate reserve. **Ms. Butler** explained the law sets aside \$75 million for the claims, handling the claims, and 10% extra. In the special session, \$12 million was taken from the excess in FY 02. The remaining \$9 million from FY 02 will be paid out this fiscal year to the general fund. The bill also took out the 10% in excess funds for all future years.

SEN. SCHMIDT remarked the Governor's office does not support **HB 360** in its current form. She wondered what part of the bill isn't supported and how it ties in with the figures.

Ms. Purdy advised the \$12 million in the bill is money that is in the status sheet in FY 2003. The cost of **HB 360** is estimated to be over \$18 million. That means a portion of the \$18 million cost is unfunded, and is not a savings. In 2004, when **HB 360** would have it's cost, in order to cover that cost, corresponding action would be to remove over \$17 million in personal services from **HB 2**. That is how **HB 360** would be paid for. There is this much money in the general fund because of the deposit of these funds in 2003. There is not \$6 million in **HB 360** without the \$17 million reduction in **HB 2** that has yet to be made.

Director Swysgood said he was uncomfortable talking about another bill that the committee would assess later, and would comment on that bill at that time. The money all goes to the general fund, and a portion of has been unreserved for another process yet to be enacted. If it is not enacted, he assumed the money would stay in the general fund. He thought language might be needed to clarify that.

SEN. SCHMIDT asked him to comment on the long range impacts.

Director Swysgood assumed the long range impacts would be on the general fund if there wasn't enough reserve to pay those claims. He said that is current law, and they have to do that regardless. By taking these excess reserves, that process would still be in place and the general fund could be impacted if the reserves that are currently in the old fund aren't sufficient to pay those claims for whatever reason.

SEN. STONINGTON stated the transfer of the \$12 million in the current fiscal year is currently listed as part of the ending fund balance for FY 03. If they were to strike the language in this bill that says "to be set aside to mitigate general fund costs of workforce reduction" and moved it off of the general fund, if they chose to pass **HB 360** it could still be used for that, but the language requiring it could be taken away. **Ms. Purdy** said that is correct.

SEN. JOHN COBB asked if it is easier to do it that way. He indicated he didn't like **HB 360**.

Director Swysgood said it is cleaner that way.

SEN. JOHNSON said on page 26, line 2, it says the total amount of funds transferred under this subsection may not exceed \$63.8 million. He wondered how close to the \$63.8 million they would be if all of the things being talked about go through.

Ms. Butler said that referred to a prior version of the law where because the State Fund policy holders contributed \$166 million for a period of time, the amount they could receive back was not to exceed \$63.8 million. They received \$14 million.

SEN. JOHNSON asked how much the total outstanding actuarial claims are in the old fund.

Ms. Butler indicated at the end of FY 02, it was \$90 million.

SEN. JOHNSON asked how much money is in the old fund reserve and surplus.

Ms. Butler advised the 10% to be set aside would be about \$9 million. There are some excess funds that are being pulled out through the amendments to the law.

SEN. JOHNSON asked how much would be in the reserve.

Ms. Butler said there would be no excess reserve.

SEN. JOHNSON said how much reserve is left, not excess.

Ms. Butler said what would be left if this bill and the amendments pass would be enough to take care of the claims as estimated by the actuary and to handle the claims on a discounted basis.

SEN. JOHNSON asked for a number.

Ms. Butler said she could get that number.

SEN. JOHNSON asked how much to administer the old fund claims in 2002 and 2001.

Ms. Butler advised the law provides State Fund can be reimbursed up to \$1.25 million. They are at that figure for those years.

Closing by Sponsor:

REP. BROWN closed on the bill. He said whatever this bill isn't necessarily involved with **HB 360**. If it does not pass in it's current form, these funds will all go to the general fund. These funds are desperately needed in the general fund to make this whole thing work.

HEARING ON HB 8

Sponsor: **REP. JOHN WITT, HD 89, Carter**

Proponents: John Tubbs, DNRC

Opponents: None

Opening Statement by Sponsor:

REP. JOHN WITT, HD 89, Carter, opened on HB 8, an act approving projects and authorizing loans for renewable resource projects. Funding for HB 8 loans is generating by coal severance tax funds. The bond proceeds are lent to local governments and water users on state owned dams to pay for construction costs. The bill will require a 3/4 vote in both Houses because the coal severance tax deposited to the trust fund secures the bonds. There are four new loans authorized in HB 8 for just under \$3 million. In addition, there are \$7.7 million in loans from previously authorized projects.

Proponents' Testimony:

John Tubbs, DNRC, gave an overview of the projects.

EXHIBIT (fcs69a04) Buffalo Rapids, near Glendive, will use these funds in combination with federal funds to retrofit pumping plants, etc.

The Mill Creek Irrigation District loan is for a repairs to a high hazard, unsafe dam outside of Hamilton in the Bitterroot Selway Wilderness. The Montana DNRC loan for the North Fork of the Smith River is a project near White Sulfur Springs to replace the spillway at a high hazard, unsafe dam. This dam is state owned, but the **Water Resources Department** passes this debt onto the Smith River Water User's Association, and it will be the local ranchers that will pay the loan back. The Lockwood project is a water and sewer line project. These funds are being held in reserve in case there are expenses that the EPA won't pay for. Nevada Creek is a department owned dam in an unsafe condition. The loan would repair the spillway, etc. Willow Creek is outside of Drummond, and they may end up borrowing substantially less. Malta Irrigation District is ready to go with repair and modification of Dodson Diversion Dam. The Canyon Creek Irrigation District is another Bitterroot irrigation project. Two wilderness dams will be torn out, and another will be put into a safe condition. HB 8 uses coal severance tax funds deposited in the trust to secure the bonds, etc.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN ZOOK commented this seemed like a much shorter sheet than usual.

Mr. Tubbs advised that is absolutely right. Until the state revolving funds were established from the EPA, every community in the state used this program for treating water and waste water systems. The success of the state revolving loan programs has provided excellent money for communities. It only has about \$30 million in bond capacity. For irrigation projects, this is the only game in town.

SEN. GREG BARKUS asked about the Nevada Creek project. He noted a lot of the work had been done, and he wondered if they are doing the work ahead of getting the money.

Mr. Tubbs advised this is the loan component. There were also grants involved. The work is ongoing and phase II is coming up.

SEN. LAIBLE asked why there are different interest rates on these bonds, etc.

Mr. Tubbs replied they have been recommending 4.5% as a base figure. For communities, they recommend 2% lower than is traditional in that program. If a community borrows less than \$250,000, they are going to pay 4.5%.

SEN. LAIBLE asked if the appropriation of \$10 million out of the coal trust is collateral for the bond.

Mr. Tubbs advised **HB 8** relies on the deposits into the coal severance tax fund, not the balance. \$16 million each year flows to that account. The first \$6 million is the debt service on the outstanding bonds and bumps out the existing balance of \$6 million and replaces it. They have pledged to bondholders that every year, they will have sufficient tax to put a year's debt service in that account. The flow goes through and secures the bonds. The local borrowers pay back \$5.5 million of the \$6 million for annual debt service. The 3/4 vote is two fold: the promise to pay the debt service and the subsidized interest rate below market. That costs about \$550,000.

SEN. BALES asked if there was less than the \$16 million going in there, are there provisions that the money will stay in that bond fund and not be placed into the next fund.

Mr. Tubbs indicated the first \$6 million is placed in this account, so if there is more than \$6 million, all of that is in the flow account.

SEN. BALES asked where the money that is being paid back goes.

Mr. Tubbs replied that goes to a debt service account outside of the coal trust and is swept annually to pay the debt service.

SEN. BALES asked if the \$6 million sits there as a contingency, and if there is less coming in, wouldn't the \$6 million remain and less go out.

Mr. Tubbs said it is an annual flow. The \$6 million represents one year's debt service.

Closing by Sponsor:

REP. WITT closed on the bill. He stated all three bills are important to infrastructure projects across Montana. He hoped the committee would recommend a 3/4 vote.

- Recess - 10:00
- Reconvene - 10:15

HEARING ON SB 435

Sponsor: SEN. BOB KEENAN, SD 38, Bigfork

Proponents: Joe Foster, Military Affairs Division
Dan Antonietti, VFW

Opponents: Ronda Carpenter, Montana County Treasurers
Association
Alec Hansen, League of Cities and Towns
Bill Johnson, Montana University System
Harold Blattie, Montana Association of Counties

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, advised there are answers to any opposition to the bill. **Greg Petesch, Legislative Services,** is working amendments that change the fiscal note dramatically for the individual programs. **SB 435** comes from discussions of how to make government more efficient, and take care of the immediate general fund shortfall. **{Tape: 3; Side: A}** He passed out information on the bill. **EXHIBIT(fcs69a05) EXHIBIT(fcs69a06) EXHIBIT(fcs69a07)** Section 1 of the bill deals with fund transfers into various programs that realize funds from the registration of vehicles. The junk vehicle fee will be changed from \$2 to \$4. Under current Montana law, a vehicle that is eleven years or older can be registered annually, or there is an option of a permanent registration fee. 57,000 cars are registered permanently, but there is an additional \$244 above and beyond

what the annual would be. That \$244 does not include the gross vehicle weight fee. The junk vehicle fee will be raised to make that whole. In 2005, the weed fund will be taken from \$3 to \$6 which will make that fund whole ongoing. The State Veteran's Cemetery which currently gets \$10 will be taken care of by increasing the fee on all vehicles that are registered, both permanent and annual, by 20 cents for each light vehicle. On page 3 of the bill, in order to keep the senior citizen and persons with disabilities transportation account whole, the fee and transfer amount for each vehicle perpetually registered will increase from 25 cents to \$1.25. The amendments are administrative and will take care of the technical notes in the fiscal note. Section 2 in the bill, makes a mandatory one-time permanent registration for vehicles eleven years or older. On page 4, Section 3, the \$6 annual flat registration fee for vehicles 11 years or older is removed. Section 4 changes the fees to be allocated. He was trying to provide money for the general fund in the short term. There are 400,000 old cars and light trucks that are registered every year. The bill will allow 320,000 less registration events at the courthouse. He thought there would be some opposition from the treasurers and the counties, but pointed out staff time could be allocated to other areas. He addressed the issue of collegiate license plates. There is a problem with setting tax policy based on a need for donations. He didn't know how many older vehicles participate in the collegiate license plate program. He explained the registration fee for under 2850 pound eleven years or older vehicles is \$13.75 or \$18.75 over that weight. Of the \$2.75, \$1.50 goes to weeds, \$1 to junk vehicles, and 25 cents to the Highway Patrol retirement. In order to collect the \$6 flat fee, the \$11 and the \$16 dollars goes into the general fund to support the big bill, the **HB 124** reimbursements. He explained Exhibit #7. They couldn't make any adjustments to include the collegiate donations. There are problems with doing that with private entities like the College of Great Falls and Carroll College. He addressed the technical notes in the fiscal note and amendments to take care of those. Counties are allowed to collect a 1/2% option tax on the valuation of a vehicle. They are allowed to go up to .7%. No county has done that yet, they are all at .5%. If there are some concerns about mitigating the cost to the counties, they have the option to go up to .7%. He spoke to the negative effects of the bill in Exhibit #6.

Proponents' Testimony:

Joe Foster, Military Affairs Division, advised the bill made sense, but the maintenance, operation, and administration of the Veteran's Cemetery is based on the sale of veteran's license plates. He favored the making whole of the veteran's cemetery

program with a 20 cent fee, because they will no longer be totally dependent upon the purchase of veteran's license plates.

Dan Antonietti, VFW, concurred with everything **Mr. Foster** said, and pointed out that World War II veterans are dying at about 1100 a day. When the cemetery was first started, they had voluntary digging of graves by hand. Now, thanks to the cigarette tax, they have money to maintain and operate the cemetery. Passage of this bill would add to the operation.

Opponents' Testimony:

Ronda Carpenter, Montana County Treasurers Association, apologized for standing in the way of a balanced budget. The treasurers have concerns about changing tax policy at the local level. Their first concern is the local option tax which is referred to on page 5 of the bill. The local option tax was voted in a number of years ago to backfill for district court funding. As that local option tax was no longer needed for district courts, some of the money has gone to other things. If the money is still being used for district court funding, it is taken out of the **HB 124** entitlement. If that local option money is taken away and put in the state general fund, those counties will be able to raise their local mills to cover the difference in district court. Property taxes will be raised in those counties by passage of the bill. There are counties that do not levy the local option tax. Although that money is all coming into the state general fund, there are a number of counties who are not collecting it and won't be contributing. That is a fairness issue. Currently, a vehicle can be permanently registered, and only about 15% take advantage of it. There is a concern with the fiscal note on page 5. She wondered about borrowing from the future to balance the current budget. A future legislature could decide the permanently registered vehicles are no longer permanently registered because it doesn't work on paper anymore and the state isn't making the money they need to balance the budget. That puts county treasurers and their clerks in the position of dealing with angry taxpayers who paid for a permanent registration.

Alec Hansen, League of Cities and Towns, advised he didn't want to interfere with balancing the budget, but had to oppose the bill. They had been involved with this legislation for almost twenty years. In 1981, former **Governor Ted Schwinden** proposed a flat tax on vehicles based on weight, it was adopted by the legislature, and replaced the old tax. There was a significant loss of revenue to local governments, cities, counties, and schools. The legislature agreed to one in a series of reimbursement programs. In 1985, the reimbursement was based on

oil severance tax revenues. By 1987, the oil severance tax had dropped from about \$30 a barrel down to about \$8 a barrel, the state did not have the money, and owed the local governments and local schools \$18 million. The legislature adopted a flat tax, 2% on the depreciated value of light trucks and automobiles. It worked just about every place but Deer Lodge County. **{Tape: 3; Side: B}** A local vehicle tax was imposed by the County Commissioners to make up the difference from the flat tax and the state reimbursement program, specifically for Deer Lodge County. It was found later that Deer Lodge County has a charter that does not allow them to increase taxes without a vote of the people. Deer Lodge County was never able to use the special advantage that was created for them by the legislature. In 1987, there was a crisis in district courts. That year, the legislature changed the whole distribution of the local option vehicle tax. Many counties adopted it; the only major county that doesn't have this tax is Flathead. This money was used to fund district courts, etc. He referred to page 5 of the fiscal note. In the first year, distributions to the counties are reduced by \$1.3 million, \$2.2 in 2005, etc. Each year there is going to be a loss of over \$2 million in local revenue, and he thought that significant. The way the revenue is distributed, half of it goes directly to the counties, and the other half is apportioned among the cities and counties on the basis of population. Of the \$2 million, about 30% of that will go to cities and towns across the state. He argued that this is a fairly significant loss of revenue at the local level. He was not sure it would translate into higher property taxes, but if it doesn't, it will have some affect on local services. County commissioners had to hold a hearing on whether or not to enact this tax. These hearings were very controversial, and this was a difficult decision. Counties that have not enacted the tax, will not make the contribution. He hoped there is another way to balance the budget, other than taking the local option vehicle tax on the older cars.

Bill Johnson, Montana University System, said there are some concerns about the bill. They understand the intent of the bill, but it takes a chunk out of the collegiate plates scholarship program. All the campuses started the program using vehicle registration and that is how the legislation was written. They have worked very hard to fill that scholarship program. At the **University of Montana**, they have over 70 students attending on scholarship through the program, and a similar amount at **Montana State University**. There is an endowment at **U of M** of \$1.2 million that goes to fund these scholarships, and **MSU** has about \$900,000. They worked hard this session to increase the donation from \$20 to \$30. To try to recover money by raising the fee to \$40 or \$50 wouldn't be feasible. They found that about 35% to

40% of collegiate license plates are on vehicles that qualify under this bill.

Harold Blattie, Montana Association of Counties, wondered if the county vehicle computer fee, on the fiscal note on page 2, would be taken care of or not. He expressed concern about the local option tax component of the permanent registration going to the state. He submitted it is not good tax policy to take a portion of a locally implemented, determined, and voted local option, and directing it to the state general fund. He pointed out that **SEN. BILL GLASER** has a bill relative to a local option sales tax. If the voters approve a local option sales tax, the legislature could come back in the following session and decide to take part of the locally imposed tax. He urged taking that particular section out of the bill.

Informational Witnesses:

Doug Monger, Fish, Wildlife and Parks, read from written testimony. **EXHIBIT(fcs69a08)**

Jim Gillett, Legislative Audit Division, said they provided staff support on the legislation and would be happy to answer questions.

Questions from Committee Members and Responses:

SEN. ESP asked about the local option tax and if it was changed in special session from covering just district court to covering other needs.

Mr. Hansen advised with the adoption of **HB 124** and state assumption, the district court uses of the money was eliminated. The distribution is still there at the county level. The counties get half the money right off the top. The other half is distributed on the basis of population. The population of the cities is roughly 60% of the total population, and that is why 30% goes to municipal government. The district court assumption had no affect on the money that goes back to cities.

SEN. ESP said the county portion of the local option tax is no longer with the district courts, but the money flows the same way it always did. **Mr. Hansen** advised yes.

SEN. BARKUS asked the sponsor about the difference between the \$25 and \$50 mandatory registration fees.

SEN. KEENAN advised the first year the law would be in effect, it is \$25. Every year after that, it is \$50.

SEN. BARKUS said it is an increased tax on people who may or may not be contemplating selling their cars a year or two later. They are mandated into paying the \$25 or \$50 registration fee.

SEN. KEENAN said that is correct.

SEN. TESTER asked if the \$50 fee is a penalty fee if a car is eleven years after this year.

SEN. KEENAN advised after the calendar year 2004, it is \$50 from thereon.

SEN. STONINGTON asked if it was constructed that way for an incentive for those with old vehicles to register when they can do it for \$25.

SEN. KEENAN said it is mandatory. He asked **Mr. Gillett** to speak to that issue.

Mr. Gillett advised without the first year discount, the one-time revenue was about \$20 million. The first year 50% discount was intended to reduce the one-time-only.

SEN. STONINGTON said it does serve as an incentive.

Mr. Gillett indicated it is an incentive for which there is no choice.

SEN. STONINGTON asked the sponsor about her old truck. She was afraid it was going to die before it has lived out it's four years of usefulness. Essentially, it is a penalty to her.

SEN. KEENAN said at least she'll know where the spark plugs are, and she can work on it. A new car has to go to the shop. He indicated 320,000 registrations in the first calendar year would be \$20 million. It sounds attractive currently, but didn't last September when they were drafting the bill.

SEN. BUTCHER asked if he was open to the idea that each year a car is eleven years old, there is the option of signing up for \$25 rather than \$50. He indicated he has a 94 Town Car with 200,000 miles. He was going to drive it another year, but wasn't sure it is going to drive much longer than that. It may be an incentive to get rid of cars. He thought there is a fairness problem.

SEN. KEENAN said he is open to how to make this work. He had concerns about the out years.

SEN. BUTCHER asked if there needs to be a grandfather clause.

SEN. KEENAN indicated there are 80,000 vehicles every year that turn eleven and become eligible for this program. He thought it would be disingenuous to change the rules after the game is started for people that are already in.

SEN. ESP asked about the local option tax and how to distribute it, and referred to page 5, line 20-21.

SEN. KEENAN advised that might be **HB 124**.

MR. Gillett said that would direct the fees to be deposited in the state checking account. That is where the local option winds up.

SEN. ESP asked if the purpose of that is to generate more state money. He wondered if the sponsor was willing to look at that issue.

SEN. KEENAN indicated he was flexible.

SEN. TESTER asked if the intent is not to worry about the \$2.45 million because there is less business at the county level because of this, or is it his intent to try to keep the counties whole as this process goes through.

SEN. KEENAN said a big point he had hoped to make, was the bill would eliminate 320,000 registration events which should save the counties money.

SEN. TESTER asked if the intent is not to worry about the impact at the local level because it is being taken up. **SEN. KEENAN** said yes.

SEN. SCHMIDT asked **Mr. Hansen** to comment on the statement of **SEN. KEENAN**. Since people can register through the mail, etc, she couldn't see where there would be any savings.

Mr. Hansen said he is not an expert on the counties, but pointed out there are no administrative costs with the money that goes to the cities.

Ms. Carpenter advised registrations can be renewed by mail, and a large number of people do so. She said there could possibly be a reduced workload, but wondered if it was enough to justify taking the local option tax. She wasn't sure if those taxes were voted on to pay local treasurers. Those clerks are there to serve the

public. Many counties only have one or two people in the treasurers office.

CHAIRMAN ZOOK asked if it is a voted levy. He thought it was permissive, and commissioners have the option to impose that tax.

Mr. Carpenter advised the treasurer that talked to her emailed that it was voted on and may have been wrong.

Mr. Hansen thought 1/2% could be voted on by county commissioners, and the .7% needed a vote.

SEN. STONINGTON asked **Mr. Gettell** if he looked at the possibility of instead of putting the initial discounted amount the first year, raising that amount and not trying to go after the local option tax.

Mr. Gettell advised the first year discount will be one-time funding. Ultimately, the reduction in the revenue stream under the local option tax is long term.

Closing by Sponsor:

SEN. KEENAN closed on the bill. *{Tape: 4; Side: A}* He said it is true that the 1/2% local option is a permissive levy.

EXECUTIVE ACTION ON HB 6

Motion/Vote: **SEN. JOHNSON** moved that HB 6 BE CONCURRED IN.
Motion carried unanimously.

EXECUTIVE ACTION ON HB 8

Motion/Vote: **SEN. JOHNSON** moved that HB 8 BE CONCURRED IN.
Motion carried unanimously.

EXECUTIVE ACTION ON HB 7

Motion: **SEN. TESTER** moved HB 7 BE CONCURRED IN.

Discussion:

SEN. JOHNSON advised he didn't move the bill because the chairman promised during the hearing they could talk about the carbon issue. He thought it a more important situation than they heard in the hearing.

SEN. TESTER withdrew his motion.

EXECUTIVE ACTION ON HB 363

Motion: SEN. ESP moved that HB 363 BE CONCURRED IN.

Motion/Vote: SEN. ESP moved that HB036302.atp BE ADOPTED. Motion carried unanimously. **EXHIBIT**(fcs69a10)

Motion: SEN. STONINGTON moved a CONCEPTUAL AMENDMENT TO PUT ALL OF THE MONEY, SAME YEARS, SAME AMOUNTS, INTO THE GENERAL FUND removing the wording "set aside as unreserved designated" in New Section 2 (1).

Discussion:

SEN. JOHNSON asked what amount of money she was referring to in 2003.

SEN. STONINGTON advised in 2003, it would add up to \$9,178,000 on page 2, line 17, and on page 3, it would add up to something more than \$3.5 million because it doesn't say in the bill how much the remainder of the 10% reserve account is.

SEN. JOHNSON thought it was about \$9 million according to the answer from Ms. Butler when he asked.

SEN. STONINGTON said then it would be \$18 million in fiscal 2003 all of which is currently considered as part of the ending fund balance.

Vote: Motion carried unanimously.

Motion/Vote: SEN. ESP moved that HB 363 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

SEN. STONINGTON will carry the bill.

EXECUTIVE ACTION ON HB 474

SEN. STONINGTON said a handout comparing SB 474 and SB 473 was coming around. **EXHIBIT**(fcs69a11)**EXHIBIT**(fcs69a09)

Motion: SEN. STAPLETON moved that SB 474 DO PASS.

Motion: SEN. ESP moved that SB047405.agp BE ADOPTED.

Ms. Purdy explained the residency requirement in the bill is unconstitutional or interferes with interstate commerce. The

second part of the amendment required **DPHHS** to not implement the program until they have heard from the federal government whether or not their request for waivers have been instituted.

Discussion:

SEN. STONINGTON said it says if the waiver is denied, the department shall implement the program using available state funds. She asked if that would be the tobacco trust funds.

Ms. Purdy indicated that was correct.

SEN. STONINGTON asked about the impact of that on the program, because the whole program is predicated on the federal waiver going through.

Ms. Purdy advised the fiscal note only refers to the tobacco money.

SEN. STONINGTON thought he planned on \$7.5 million of tobacco money being leveraged to start the program, and then using that money as matching money for Medicaid money. One of the issues brought up by **Jeff Buska, DPHHS**, was in order to qualify for the 1115 waiver the state government would apply for, they have to show corresponding savings in Medicaid spending in other programs. For the state to show corresponding savings of \$21 million would be quite a lot.

Ms. Purdy said the assumption is the state would receive \$22.5 million in Medicaid match for a full program cost of \$30 million.

SEN. STONINGTON asked **Mr. Buska** about the implications of using the tobacco trust money as match money and qualifying for a 1115 waiver using that money.

Mr. Buska explained how Medicaid waivers work. In applying for the waiver, there is a target population and a requirement to show the federal government revenue neutrality on the federal funds. In matching \$7.5 million for an expanded pharmacy benefit, the state has to show a methodology in which they would save at least that much in the Medicaid program over a demonstration period of five years. The state would have to show the targeted population, typically the medically needy, would be less likely to become Medicaid eligible and then receive full benefits under the Medicaid program.

CHAIRMAN ZOOK asked if the federal government doesn't care if that \$7.5 million is tobacco money or any other money as long as its not their money.

SEN. BUTCHER asked about the amendment about the eligibility requirement. He wondered about an influx of the elderly into Montana.

Mr. Buska didn't know if that would be the case. The population is free to move amongst the states. He thought the state must have a residency requirement for its regular Medicaid program, but under the waivers, regular Medicaid rules can be waived. The state could put in a request for a residency requirement that might be entertained by the federal government. He didn't know if a lot of people would move to the state, as there would be income eligibility requirements as well.

SEN. NELSON asked how many Montanans will go on the program.

Mr. Buska said it depends on how the program is crafted in terms of eligibility. **SB 474** has a lot more income eligibility requirements that can make it pretty restricted.. If the program is matched with Medicaid dollars, a pharmacy benefit can be provided to more covered individuals than with the \$7.5 million. The state of Nevada runs their program only with the tobacco money, and are not matching it with any Medicaid dollars at this time. Currently, they have a program that covers about 7500 individuals. They are looking at the pharmacy plus waivers to expand their program.

SEN. ESP commented a slide prepared for the presentation indicated about 32,000 would be in the Montana program.

SEN. MIKE COONEY said if the waiver isn't approved, the program would be funded with the \$7.5 million only, and that would certainly change the number of people participating.

Vote: Motion carried 18-1 with COONEY voting no.

Motion: SEN. LAIBLE moved SB047404.AGP. **EXHIBIT**(fcs69a12)

SEN. LAIBLE advised the amendment clarifies and defines pharmacy rates, changes language on page 3, line 25 from "benefit" to "premium", and changes the rates for eligibility for premiums.

Vote: Motion carried unanimously.

Motion: SEN. LAIBLE moved HB047401.AGP. **EXHIBIT**(fcs69a13)

SEN. LAIBLE explained this changes the eligibility based on the federal poverty levels.

Discussion:

SEN. ESP asked for further explanation of the amendment.

SEN. LAIBLE said there were multiple levels of eligibility and this changes it to only three.

SEN. STONINGTON said it sounds like the three are higher.

SEN. LAIBLE clarified there are three eligibilities. One is 75% to 125% of the poverty level, and that will be 100%. At 130% to 174%, there is a \$17 per month per family unit of one. From 175% to 199% of the federal poverty level, it changes to \$34 for a per month family of one.

Vote: Motion carried unanimously.

Motion: **SEN. STONINGTON** moved SB047403.AGP. **EXHIBIT(fcs69a14)**

SEN. STONINGTON explained the amendment deals with the issue of the private insurance company being regulated and licensed to do business in the state. It also clarifies it can be broader than just "an insurance company". It could be a reinsurance company, a pharmacy benefits manager, etc. The Nevada program is run through a pharmacy benefits manager backed up with a reinsurance company.

SEN. COREY STAPLETON said regulation is already a requirement. He asked about Title 33, Chapter 2, part 12.

SEN. STONINGTON said it was her understanding in the hearing, that it was not clear the insurance company would be regulated.

SEN. STAPLETON advised current law is every single primary insurance company and reinsurance company has to be licensed in the state, and there are no exceptions. He didn't think the amendment was necessary, but it doesn't hurt the bill.

SEN. STONINGTON said when she asked for an amendment, she wasn't sure page 2, line 24, encompassed different forms. She was not sure a pharmacy benefits manager is considered an insurance company. She asked **Claudia Clifford, Office of the Insurance Commissioner**, to respond to the issue of regulation and making the bill broader than "a private insurer".

Ms. Clifford advised that Section 9, page 7, deals with the applicability of insurance code to certain entities. In (4) there is an exception for the program that their codes would not apply to these managed or community networks and some health organizations that have contracts with **DPHHS**. Another section of the bill provides for an RFP process, and she stressed they don't

want to give standing in the RFP process to an entity that's not regulated like Magellan. Magellan had a contract with the state to provide mental health services, which was an at risk contract like an insurance contract. They weren't a regulated entity, and they sold and resold the contract without the state being able to evaluate who they were reselling it to and whether it was a solid company. **{Tape: 4; Side: B}** She had a discussion with **Greg Petesch**, and she thought a statement in the earlier part of the bill that the contracts are with licensed carriers really helps provide that the entities with standing to bid on the contract are licensed carriers.

SEN. STONINGTON asked about the point of Section 9 in the bill in her discussions with **Greg Petesch**.

Ms. Clifford advised she was not sure of the original intent of that section.

SEN. JOHNSON said she used Magellan as an example, but they didn't supply any services at all. They just organized the service providers.

Ms. Clifford indicated her understanding of that contract was it was a risk based contract. They were receiving payment from the state to cover the cost of any services. They could lose money on the contract; it was a capitated rate the state was paying Magellan.

SEN. JOHNSON thought that is correct, but he thought she said they provided services. They arranged for the provision of services and were paid on a fixed contract.

Ms. Clifford apologized and said they didn't actually provide services, but were paid for services like any carrier or insurer would be.

SEN. STONINGTON said if the committee plans to put on the amendments, she would discuss the need for Section 9 with **SEN. FRED THOMAS** and they could deal with that on the floor if need be.

Vote: Motion carried unanimously.

Motion: **SEN. ESP** moved that SB 474 DO PASS AS AMENDED.

Discussion:

SEN. STONINGTON said there were two bills before them addressing the same topic. She referred to the comparison handed out by

AARP, because there was confusion about what the differences were. She hoped the committee would move both bills onto the floor for discussion so the body could look at both concepts. This concept is a hybrid of the Nevada model. The Nevada model is entirely done with state money, and is really an insurance product. This program is intended to be a combination of that approach plus Medicaid matching monies and is provided for people who are Medicaid qualified through the waiver program. **SB 473** is just the Medicaid match portion of the same idea, without the addition of state funds.

SEN. JOHNSON asked exactly where the \$7.5 million comes from, and if it comes from the principle of the tobacco trust. **SEN. BOB KEENAN** indicated it does.

SEN. ESP said he was sure the rebates the pharmaceutical companies will give under **SEN. JIM ELLIOTT'S** bill could also be negotiated for under **SEN. THOMAS'** bill if the insurance company will use some of the mechanisms. He thought this bill would combine the good parts of **SEN. ELLIOTT'S** bill with this one to leverage more money. He urged support for the bill.

Vote: Motion carried 18-1 with **JOHNSON** voting no.

EXECUTIVE ACTION ON SB 473

Motion: **SEN. STONINGTON** moved that **SB 473 DO PASS**.

Motion: **SEN. TESTER** moved **SB047301.AGP. EXHIBIT(fcs69a15)**

SEN. TESTER advised the amendments clarify eligibility, the application fee, the dispensing fee, and the date of the start of the program. The amendment also corrects drafting errors, and directs the department actions to keep the program within legislative authority, etc.

Vote: Motion carried 18-1 with **ESP** voting no.

Motion: **SEN. TESTER** moved **TO AMEND SB 473 with a conceptual amendment. EXHIBIT(fcs69a16)**

SEN. TESTER explained amendment 9 changes "Hawaii" to "Maine", because Hawaii's program is not completed and Maine's has been operating with amended waivers. Amendment 10 changes the poverty level.

SEN. ESP asked about changing "Hawaii" to "Maine", and if it was because of the methodology they are going to use.

SEN. TESTER indicated that is on the top of page 3, line 2.

Vote: Motion carried unanimously.

Motion: **SEN. TESTER** moved TO AMEND SB 473 CONCEPTUALLY.

EXHIBIT(fcs69a17)

SEN. TESTER explained the amendment. (Exhibit 17)

Mr. Buska explained at the hearing he handed out some suggested language for department amendments related to the same thing, and they preferred using those.

SEN. TESTER withdrew his amendments.

SEN. STAPLETON asked since the amendments are drafted without legal oversight, if they were overlooking anything.

Ms. Purdy advised the motion could be made with pending legal review for any changes that might need to be made strictly for legal purposes.

Vote: Motion TO WITHDRAW MOTION ON PREVIOUS AMENDMENT carried unanimously.

Motion: **SEN. TESTER** moved TO AMEND SB 473. **EXHIBIT**(fcs69a18)

Mr. Buska explained the amendment.

Vote: Motion carried unanimously.

Motion: **SEN. NELSON** moved that SB 473 DO PASS AS AMENDED.

Discussion:

SEN. KEENAN said **SB 473** is a discount for pharmacy for people that are paying their own pharmacy currently. He was trying to figure out how to get the mental health pharmacy benefit, the Mental Health Services Plan, into the bill. It doesn't apply to **SB 473**, so he was anxious to get **SB 474** passed, as a vehicle. He said he would do an amendment on the floor of the Senate.

SEN. ESP reiterated the program in **SB 473** could be done within **SB 474**, and he didn't see the need to move both bills forward.

SEN. NELSON said there were so many proponents, and the bill has so many positive aspects, she hoped this could move on and the

two could be meshed. A tremendous amount of work went into the bill, and she hoped both bills could be passed out of committee.

Vote: Motion carried 10-9 with BALES, BARKUS, BUTCHER, ESP, KEENAN, LAIBLE, STAPLETON, TASH, and ZOOK voting no.

- RECESS - 12:00
- RECONVENE - 5:10 P.M.

HEARING ON SB 485

Sponsor: SEN. JOHN COBB, SD 25, Augusta

Proponents: John Chappuis, DPHHS
 Steve Yeakel, Montana Council for Maternal and Child Health, etc.
 Pat Melby, Montana Medical Association
 Wally Melcher, Montana Association for Independent Disability Services
 Chris Volinkaty, Kids and Families with Developmental Disabilities
 Linda Stoll, Public Health Officers
 Rose Hughes, Montana Health Care Association
 Bill Kennedy, Yellowstone County Commissioner
 Jim Ahrens, Montana Hospital Association
 Jane McCall, Montana Children's Initiative
 Susan Good
 EDITH CLARK, HD 88, Sweetgrass

Opponents: Joe Mazurek, Protect Montana Kids
 Verner Bertelsen, Montana Senior Citizen's Association
 Sammy Butler, Montana Nurses Association

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, Augusta, opened on SB 485, which would revise the allocation of tobacco settlement proceeds for this biennium only. It transfers about \$11 million to the DPHHS Prevention and Stabilization Account. He explained a summary of items funded from the account. **EXHIBIT(fcs69a19)** The **Health and Human Services Subcommittee** established the account and money could come from this bill, HB 722, and HB 734. He explained the bill section by section. {Tape: 5; Side: A} He advised the bill implements HB 2. They are trying to use this money, but may have to narrow it down. They want to keep people out of Warm Springs, etc. If they don't get all the money, they want to specifically line item where the money goes. He said he knows the voters

voted on the tobacco money, and he wasn't saying they didn't know what they were voting for. He felt tough decisions must be made. They can have an \$18 million program on tobacco prevention which would be pretty good, but they can have a lesser program and fund some of the things that need funding. \$18 million was supposed to go to tobacco prevention. \$6.4 million of the money was left there and \$11 million was taken. The tobacco prevention people will still have approximately \$6.4 million tobacco settlement, plus they received about \$1.7 in federal money. They will have about \$4 million each year for tobacco prevention and the rest will fund these other programs. He wished they didn't have to take that money, but if these programs aren't funded, the impacts are quite severe. The bill is only effective for two years for the tobacco prevention money, and at the end of two years the stabilization fund goes away. The money can then all be used for prevention programs unless the legislature changes the law or another initiative passes.

Proponents' Testimony:

John Chappuis, DPHHS, testified the department supports the bill. The bill takes money from tobacco dollars and leaves \$3.2 million a year for prevention, which is a very large increase. It will allow that program to grow, and the department supports those prevention activities. There are high priorities for these precious resources, like allowing their base to be filled. They are still \$28 million below the Executive budget. The money would help with the mental health state plan pharmacy services, CS&ED funding, childcare, MIAMI, and other priorities.

Steve Yeakel, Montana Council for Maternal and Child Health, Montana Childcare Coalition, and the Montana Human Resource Development Council Directors Association, testified in support of the bill. As a tobacco prevention advocate, he appreciated the major increase in the program awarded by the subcommittee. He supported increasing this funding as the numbers come in to show the program is working. He understood the need to make difficult decisions with this money, and asked for support for the bill.

Pat Melby, Montana Medical Association, testified the association is a reluctant supporter of **SB 485**. They fully support the creation of the Prevention and Stabilization Fund in the bill for the purposes of funding the programs as specified in B (3) of the narrative for **HB 2**. Their support is conditional on the bill sunset of June 30, 2005 so there is an opportunity to restore the funding to the tobacco prevention program which the association very much supports. Secondly, the Prevention and Stabilization Account must be funded at the level discussed in the Narrative

for **HB 2**. There is a need for an additional \$25 million to adequately fund many of the programs listed. If the tobacco money is to be used to help fund services, additional revenue must be found to fund the rest of it.

Wally Milcher, Montana Association for Independent Disability Services, and the **Montana Association for Rehabilitation**, testified they supported the increases in tobacco taxes for preventative and economic reasons. He encouraged favorable consideration of **SB 485**.

Chris Volinkaty, Kids and Families with Developmental Disabilities, rose in support of **SB 485**. She praised the work of the Subcommittee, and said this was the most difficult budget anyone ever had to work on. She didn't think the voters of Montana understood exactly the implications of their vote. Because she had been around state government and knew what this money was funding, she voted against it. Her husband voted for it because it sounded like a good idea. The next day when she went to work, her employees said of course they voted for it because there was no informaton on the things that may be cut. She thought if the public knew that, they would back off from the stand that this was a vote of the people. What's in the Stabilization Account is important, and it will all cost shift. There will be a wreck within a few months. If pharmaceuticals are not provided to those with severe mental illness, jails and hospitals will be full, and people will die. If some kind of day care support is not provided, TANF caseloads will rise. If extended employment is cut, individuals with severe disabilities will be on the street with no place to go. If the MIAMI program is not funded, there will be more children with developmental disabilities born. If the hospice program is cut, Medicaid recipients will go to the hospitals to die and receive medical treatment right to the end at a far greater cost. She urged a do pass.

Linda Stoll, Public Health Officers, said it has been a difficult decision for public health officers, who were big supporters of the initiative. They are facing cuts in health care services, and one of the things they are concerned about is the MIAMI program. In Lewis and Clark County, about 60% of the women served in the MIAMI program are smokers. A huge component of MIAMI is a smoking cessation program. The public health officers believe that within the Prevention and Stabilization Account, there are a lot of programs dealing directly with smoking cessation. Within the past couple of years, a great deal of dismantling has occurred with regards to the infrastructure of the smoking cessation programs and smoking prevention programs. They wonder whether or not the \$9 million will be able to be

spent and if the infrastructure would be in place for all that money to go to adequate smoking cessation programs.

Rose Hughes, Montana Health Care Association, said this is the second time this session they have testified on a bill that in many ways, isn't really their business. The first one was **HB 750, REP. ROY BROWN'S** bill which raises money through the coal trust and cigarette tax. They have never thought it their place to tell the legislature how to raise money, which taxes to raise, etc. Normally, she just talks to the legislature about issues related to nursing homes. This session, there is no source of revenue to fund the programs that need funding. They support this bill because the money has to happen to fund some of these programs. There is a whole list of services in the Prevention and Stabilization Account that weren't funded in the Governor's budget, which could be funded. The unspecified cuts to the base are also of concern. In the Senior and Long Term Care Division alone, the unspecified cuts to the base program is about \$7 million in general fund over the biennium and where most of that is Medicaid, it translates into closer to \$28 million. That includes nursing homes, the community based waiver for the elderly to stay home, home health, etc. She urged finding money to fund those programs. They support the bill because they think it's reasonable.

Bill Kennedy, Yellowstone County Commissioner, advised he chairs the Health and Human Service Committee for the Montana Association of Counties. He supported the initiative for the tobacco dollars, but there are some things in the bill that he thought are important. He favored the sunset on the bill, the funding of the MIAMI project, and the prescription drug program for the Mental Health Services Plan. Those are two areas that are in dire need, and are not being funded through the budget process. He urged a do pass.

Jim Ahrens, Montana Hospital Association, acknowledged these are difficult times and difficult choices have to be made. The organization supported the initiative, and he thought people knew what they were doing. He encouraged them to vote on the stabilization plan. They have always supported a sales tax, cigarette tax, etc., to help support human services. He stated they are in support of the bill.

Jane McCall, Montana Children's Initiative, and **Deaconess Billings Clinic**, advised the clinic supported the initiative and believes it is the right thing to do, but did not understand the dire circumstances the state would be in. They strongly support the bill. They think the 35% is fair, and this is a time when compromises are needed. They also supported **HB 750**.

Susan Good, testified on behalf of providers of medical goods, particularly to those on Medicaid. She thought it important to put money where there is going to be some serious accountability. She thanked **SEN. COBB** and all the members of the Subcommittee.

EDITH CLARK, HD 88, Sweetgrass, stated this is a committee bill and was very difficult. She praised the other members of the Subcommittee and gave the bill her full support.

Opponents' Testimony:

Joe Mazurek, Protect Montana Kids, opposed the bill, and expressed respect for the Subcommittee. He said he understood the predicament and the burdens of their job. They understand why the bill is here and why it's necessary. They appreciate the two year sunset, and recognize how critical it is to fund the human services. As the advocates for tobacco prevention, they oppose the bill in principle. They think it is important that the number one cause of preventable death in the state is tobacco related illness. He said a genuine effort at tobacco prevention is needed. From the beginning of the session, they have indicated they recognize the predicament and are willing to take less than the full amount the voters approved. When the program was started, the plan was for \$3.99 million per year. It was moving toward the objective of former **Governor Marc Racicot's** Tobacco Prevention Advisory Council of \$9.3 million per year. The recommendations that were made were for an entry level tobacco prevention program. **{Tape: 5; Side: B}** He said it was frustrating to hear tobacco prevention programs described as billboards or pamphlets. The bulk of the money in prevention goes to programs in the communities, including Indian Reservations, schools, and cessation programs. There is a public education component which includes some advertising. The tobacco industry spends \$30 million a year in this state alone promoting their product and is very successful at it. States which have invested fully in prevention, have seen huge reductions in smoking. These programs are accountable. They think it is important at some point to get serious about tobacco prevention. He thought that is why the voters voted the way they did. It was the minimum amount recommended for Montana by the CDC. They have been an advocate for a tobacco tax for the revenue and in terms of reducing smoking. They know the bill has to pass to fund the Prevention and Stabilization Account, but they would like, at some point, for the legislature to get serious about prevention. He hoped that by the 2005 biennium, prevention would get fully funded as the voters intended.

Verner Bertelsen, Montana Senior Citizen's Association, said he was reluctant to testify against the bill. They know the need in

out there, but feel this is an essential program. They hope in the long run it is fully funded.

Sammy Butler, Montana Nurses Association, said they applaud **SEN. COBB** for his continued commitment to try to fund human services. They also know how many people need the services. They wouldn't need those services, if they had been prevented from smoking. They understand the tobacco program may not be fully funded. Their members feel an obligation to respect decision of the voters, and hope a tobacco tax could be passed to fund some of these programs. She said they reluctantly oppose the bill.

Questions from Committee Members and Responses:

SEN. ESP asked **Mr. Mazurek** how many states had to cut funding for prevention programs.

Mr. Mazurek stated that given the fiscal crisis of most states, most of them have reduced funding somewhat. The programs that they had were effective in saving money and lives.

SEN. ESP advised California in 2002, cut their prevention program by \$62 million. He wondered if they cut it in FY 03.

Mr. Mazurek said he could get that information.

SEN. ESP asked if his organization rates prevention programs.

Mr. Mazurek advised the group he represents is **Protect Montana Kids**. They don't rate prevention programs, but there may be other organizations that do. They primarily rely on the recommendations of the Center for Disease Control.

SEN. ESP asked if **Protect Montana Kids** is part of a national organization. He did a search on the Internet, and found a Protect Connecticut Kids, etc

Mr. Mazurek said there is an organization called Tobacco Free Kids. **Protect Montana Kids** is a Montana organization. It is the Montana arm of the American Cancer Society, the Montana Heart Association, and the Lung Association.

SEN. JOHNSON advised one of the frustrations of legislators is the bill is a good idea, but there is a little disagreement about where the money is coming from. He asked **Mr. Ahrens** if the people in his organization would support a general sales tax.

Mr. Ahrens said the Hospital Association would, and he thought most members of the Alliance would. They take a lot of money

from government because they provide the care. They have always felt they should be part of the revenue solution, in their opinion a sales tax, a cigarette tax, and an income tax.

SEN. TESTER asked **Mr. Mazurek** about potentially taking less and the vision of raising the figure in 2005. This proposal leaves them about \$3 million each year. He asked what number would be acceptable.

Mr. Mazurek would recommend they take \$3.7 million in new money out of this account the first year of the biennium, and \$5.5 million the second year of the biennium. That does not include CDC money, which would add another \$843,000. It would be a two year sunset.

Closing by Sponsor:

SEN. COBB said this was a committee bill, not his bill, because he would take all the money. They need the money for the Stabilization Account, and if they don't get enough, **SEN.**

STONINGTON, REP. CLARK, SEN. KEENAN, and he have been working on smaller plans to make this work. They have to decide if the money is going into the base, which is \$28 million below the Governor's budget, or use it to fund some of these other programs that will prevent people from going to higher cost services. If the bill is left as is, the money goes into an account or they make it more narrow. The cuts are the worst he's ever seen. That was why he wanted to take all the money. The other committee members favored a reasoned approach.

CHAIRMAN ZOOK indicated there was some concern about taking action on the bill since it implements **HB 2**.

Motion/Vote: **SEN. KEENAN** moved that **SB 485 DO PASS**. Motion carried unanimously.

SEN. STONINGTON advised **SB 476** was in similar condition. It implements **HB 2** and was still in their folders.

- Reconvene **HB 2** -

CHAIRMAN ZOOK advised they had to take action on some amendments so the **Judiciary Committee** can draft a committee bill.

SEN. ESP explained the purpose of the two amendments was to put language in **HB 2** so a committee bill can be drafted to manage district court funding and assumption details. **HB200229.alz** is an appropriation out of the general fund to the Judiciary to provide administrative support so the title of the bill can

include revising district court assumption and the funding thereof.

Motion: SEN. ESP moved HB00229.ALZ BE ADOPTED. **EXHIBIT**(fcs69a20)

CHAIRMAN ZOOK conveyed this was the work of the Subcommittee that had been working most of the session. He had great faith in those that worked on it, and it was a bipartisan committee.

Vote: Motion carried unanimously.

Motion: SEN. ESP moved that HB000230.ALZ BE ADOPTED.
EXHIBIT(fcs69a21)

SEN. ESP stated this amendment creates an appropriation from a state special revenue account, created in the bill, that will accept money from the counties to settle a liability for accumulated sick and annual leave for former county employees the state assumed. This appropriates the money from that fund to the Judiciary.

Vote: Motion carried unanimously.

- Recess HB 2-

EXECUTIVE ACTION ON SB 476

Motion: SEN. STONINGTON moved that SB047601.ATP BE ADOPTED.
EXHIBIT(fcs69a22)

SEN. STONINGTON reminded the committee the bill sets up a gatekeeper by establishing a procedure for involuntary commitments to have second opinion by the Community Mental Health Center. The Community Mental Health Center has to identify whether there is appropriate community treatment for that person as the first priority. The bill is intended to contain the numbers of people who go to Warm Springs for treatment and to keep those people in communities for treatment at a lower cost. The amendments add a provision that says if there is to be a recommitment of someone in Warm Springs for a longer period of time than the initial three or six month period, they Community Mental Health Center would have to be brought into the picture again for a second opinion. The amendment also rephrases wording in the bill to make the purpose statement more positive.

Discussion:

SEN. MCCARTHY asked where the hearing on the recommitment would be held.

SEN. STONINGTON said she was not sure if they would have to go back to the point of origin for the hearing.

{Tape: 6; Side: A}

Dan Anderson, Addictive and Mental Disorders Division, said those hearings are held at Warm Springs.

SEN. MCCARTHY asked if her County Attorney will be required to hear all of these.

Mr. Anderson said it would be department attorneys.

SEN ESP asked why financial incentives can't be created.

Mr. Anderson thought that could be done.

SEN ESP asked about contracts with non-Medicaid service providers.

Mr. Anderson said they have contracts with the non-Medicaid part of the adult program with the Community Mental Health Centers. It is those contracts where they would have these financial incentives.

SEN. ESP asked if it was difficult to contract with other non-Medicaid mental health providers.

Mr. Anderson said because of the limited size of the adult non-Medicaid program, they proposed contracting mainly through the Community Mental Health Centers in their budget presentation. They already provide 85% of the non-pharmacy part of that program. This bill is part of that whole process to make those agencies financially responsible for the screening of patients that go to the state hospital.

SEN. KEENAN asked about the definition of CMAC's. Under CMAC's in the accounting system, are a dozen licensed mental health centers. He asked if the bill is specific to Community Mental Health Centers or is it licensed mental health centers, and how that is going to play into the new amended **SB 347**.

Mr. Anderson advised the bill as written applies to the four Community Mental Health Centers as defined in 53-21-201. It does not apply to the other mental health centers. **SB 347** does not change the definition in the statute until 2005, when the legislature will look at how well the screening process worked over the past two years. The House amendments continue with a definition of Community Mental Health Center.

SEN. KEENAN asked him to walk through an involuntary commitment. He was concerned there could be conflict of interest. He wondered who is going to pay, because there is no funding. He wondered how to control the Community Mental Health Centers to avoid "cherry picking" which is sending the person to Warm Springs to get them out of the community, etc.

Mr. Anderson replied a person who appears to be seriously mentally ill is picked up by law enforcement and is taken to an emergency room. A mental health professional has to say the person appears to be seriously mentally ill. That triggers the ability of law enforcement to hold that person in the hospital. By the next day, that person has to appear in court, and the county attorney has to say there is enough reason to believe the person is seriously mentally ill and file a petition. At that point, in this bill, the county attorney would notify the mental health center. If the original professional says the person should go to Warm Springs, then the mental health center has to do a report, bring it to court, and the judge has to consider it at the time of disposition. He didn't believe the mental health center could unilaterally get the person out of the community because the county attorney would have to be convinced the person should be out of the community, the judge would have to be convinced, and the person himself is entitled to a second opinion. In addition, the bill requires a financial incentive for the mental health center not to overuse the state hospital. It could be to their financial disadvantage to use the state hospital.

SEN. ESP asked what if the mental health center doesn't do anything in between the time of the initial appearance and the final hearing.

Mr. Anderson explained the law would require the mental health center to have a report to the judge on the day of disposition. If they do not do that, they would be in violation of the law. He assumed they could be held in contempt of court.

SEN. ESP asked about the effect on the respondent.

Mr. Anderson guessed that if the mental health centers failed to make a report, the judge would use the information he or she has. This would not replace any other step in the process, but this will provide one additional look.

SEN. ESP asked what is the shortest amount of time between the initial appearance and the disposition hearing.

Mr. Anderson thought two days.

SEN. ESP expressed concern this could slow down the process. This would be to the advantage of the state and the disadvantage of the county paying the bills up until the time of disposition.

Mr. Anderson indicated it is an additional element that must be in the process. He didn't believe there would be any significant additional time. A recent **Supreme Court** decision on this issue criticized the entire process for being too fast and not allowing enough time to do a thorough review.

SEN. COBB asked if all the bill does is to provide a gatekeeper for Warm Springs.

Mr. Anderson said yes.

SEN. COBB asked what the concern is.

SEN. KEENAN said currently through the deliberations of **SB 347**, there are concerns in rural counties, and Lake County is one of them. If there is a request for an evaluation for an involuntary commitment in Lake County, and that person is not a client of Western Montana Health Center, then they won't do the evaluation. This very well could be an unfunded mandate for pre-commitment costs. There has to be an agreement with the mental health centers that they will do these screenings for their clients or anybody else.

SEN. COBB reasoned the bill is in trouble. He asked if the screening is not done, if the cost goes to Warm Springs. He wondered how to get around the issue.

Mr. Anderson believed the Community Mental Health Centers will do the screenings regardless of what the practice is currently. There has been steady growth in the number of patients in the state hospital. The absolute capacity is 189. If the rate of growth is projected over the next two years, they will get to the point where they are regularly over capacity. One option is to open one of the buildings and expand the state hospital. This is trying to avoid doing that and to keep people in the community.

SEN. STONINGTON said the amendment has to do with a recommitment petition that would be held at Warm Springs. It is a piece of the bill she would like to see go on the bill in this discussion.

Vote: Motion carried unanimously.

SEN. STONINGTON stated in absence of an incentive to keep people out of Warm Springs, there is almost an incentive to put people in Warm Springs because it diverts the cost to the state.

Community services, in general, are less expensive than the state hospital. There is a need to keep people in their communities for treatment. The bill is trying to set up financial incentives, and an organization throughout the state whose legal responsibility is to identify places in the community for services for people who are about to be involuntarily committed to the state hospital. She wasn't clear as to what the objections were. She sensed it could be a part of the movement toward the bill that **SEN. KEENAN** has in the House. She thought this concept dovetails very nicely with that, and is a part of what she thought would be a longer lasting structure for adult mental health services in the state. Some group needs to have oversight so people are not committed to the state hospital.

CHAIRMAN ZOOK advised there was a concern expressed at the hearing about the psychotropic drugs.

SEN. STONINGTON said without the drugs for the Mental Health Services Plan, the non-Medicaid funded mental health program, this would be very difficult to implement. The drug coverage is needed for these people. The cost would be \$9.3 million for the biennium. She asked the department to prepare the fiscal note based on that figure, because she felt that without the ability to prescribe medication for these people, the CMHC's would be incapable of doing this function. The department responded by saying there is no direct measurable fiscal impact to this legislation. It was requested and supported by the subcommittee as part of a budget plan for adult mental health services. The plan includes caseload and utilization increases in Medicaid funding, establishment of one behavioral health facility, direct contracts with CMHC's for non-Medicaid indigent adult services which is what this bill addresses, and continuation of a pharmacy benefit for indigent adults with serious mental illness who are not Medicaid eligible. The budget plan is largely included in **HB 2**, except the pharmacy benefit is included in the Prevention and Stabilization fund which is not funded. The pharmacy benefit cost is \$9.37 million for the biennium. It is doubtful that community based treatment options will be successful in controlling admissions if the pharmacy benefit is not funded for non-Medicaid indigent adults.

SEN. KEENAN said he would support the bill, but had a conflict with the Community Mental Health Centers. 53-20-201 defines the Community Mental Health Centers as "offers comprehensive mental health services that include at least the following services: screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission. This goes beyond current law, because it goes into the courts. His concern is this has been law for 28 years, and

it has been ignored other than with voluntary commitments in Great Falls. He was curious to see how the financial incentives and disincentives on page 6, lines 8-10, would play out. He had no reason to oppose the bill. The bill comes forward with good intentions. His frustrations were with the law that was being ignored. The Community Mental Health Act was repealed by the federal government in 1981 because it was a "poor design for rural states". Montana hangs on to that model and wonders why there are problems with the system.

CHAIRMAN ZOOK advised in his country, it is 80 miles around to get any kind of mental health services.

SEN. ESP said he concurred with **SEN. KEENAN** and **SEN. STONINGTON** that this could be an improvement. The policy decision doesn't mean anything if there isn't any money to fund the community level services. He thought in some cases if done right, it might speed things up.

SEN. STONINGTON emphasized the difference between the bill and current law, is that this requires the courts to get the second opinion from the Community Mental Health Centers. Current law just says they will provide the screening; the bill requires the court will get the opinion. It puts the Community Mental Health Centers in a more responsible position, and with the financial incentives, she thought there was some promise.

SEN. KEENAN commented on how lucky they had been telling judges what they are supposed to do. He hoped it works. From the Chief Justice on down, he had always been told mind your own business, we're in a different branch of government.

Motion/Vote: **SEN. STONINGTON** moved that SB 476 BE ADOPTED AS AMENDED. Motion carried unanimously.

{Tape: 6; Side: B}

EXECUTIVE ACTION ON SB 435

Motion: **SEN. KEENAN** moved that SB43501. AGP BE ADOPTED.
EXHIBIT (fcs69a23)

SEN. KEENAN explained the amendments provide coordination instruction with **SB 118**. The amendments bring the bill into conformity with what he tried to present. He further explained the amendments.

CHAIRMAN ZOOK advised the main thing is the fiscal note on the bill.

SEN. STONINGTON asked if he dealt with the collegiate scholarship license funds in the amendment. **SEN. KEENAN** indicated nothing could be done for them, because some of them are private and some public. There can't be a fee for a private institution. The donation would have to go up to \$100. He couldn't get that coordination.

SEN. COONEY asked about the specialty plates, and if that would be the same issue. **SEN. KEENAN** indicated yes.

Motion: **SEN. KEENAN** moved that SB 435 DO PASS AS AMENDED.

SEN. KEENAN explained a handout about licensure fees.

EXHIBIT (fcs69a24) He said he looked at the general fund impact from 2007 and on, and the total change in general fund revenue would be \$4 million a year. That doesn't account for the savings at the county level. He acknowledged the collegiate and specialty license plates create a problem.

CHAIRMAN ZOOK advised a new fiscal note would be needed, but the bill could move on.

Discussion:

SEN. TESTER said he assumed the amendments don't do anything for the county governments regarding the local option tax.

SEN. KEENAN said that is correct. He found it interesting the lodging tax was for district courts. The state took over the district courts and forgot about the option tax, and now it is crucial to county governments.

SEN. TESTER said the counties are not real flux. They are having the same problems as the state.

SEN. ESP commented they didn't necessarily forget about the tax. They passed legislation and discussed whether the counties could use that local option tax that used to be used for district court for other purposes. They weren't expressly given authority to use it. He asked if the bill moves the local option money to the state, or is the assumption the counties will discontinue levying that tax.

SEN. KEENAN said the money goes into the general fund and then becomes part of the **HB 124** reimbursement with the 3.65 growth factor.

SEN. ESP asked why the counties would continue to assess the local option if they didn't get the money.

SEN. KEENAN said that is a good question. He thought they might have the fear of the legislature looking into the reimbursement rates in **HB 124** and adjusting that accordingly.

SEN. ESP thought the money in **HB 124** has nothing to do with the local option at this point. He asked if the reimbursement back to local government would increase.

SEN. KEENAN advised the local option would go into the general fund, and then back to the counties. It wouldn't change the formula.

SEN. ESP said the argument could be made this will just go into the general fund.

CHAIRMAN ZOOK asked how many less registrations would it be a year.

SEN. KEENAN said 320,000 vehicles would not have to be renewed, and 8000 would turn 11 every year.

SEN. JOHNSON asked if \$10 million would be saved over a two year period, and then in 2007 the change in the revenue will be \$4 million a year from then on. **SEN. KEENAN** said that is correct.

SEN. JOHNSON asked if \$10 million would be given up over the next two years to lose \$4 million per year from then on to perpetuity. **SEN. KEENAN** said that is correct.

SEN. BUTCHER said a lot of older vehicles are not licensed at all. He thought there is a good possibility more of them would actually get licensed.

SEN. KEENAN said the bill came out of discussions started the previous summer trying to figure out what to do about the budget. The bill is about convenience for people in Montana that have older cars that want to register them and be done with it. It is beneficial to the general fund in the current situation, and he understood the long-term impacts.

Vote: Motion carried 16-3 with **NELSON, SCHMIDT and TROPILA** voting no.

EXECUTIVE ACTION ON SB 446

SEN. BARKUS advised the bill will transfer the administration of the Flathead Basin to **DNRC**. There is no fiscal difference.

Motion: SEN. LAIBLE moved that SB044601.atp BE ADOPTED.

EXHIBIT (fcs69a25)

SEN. LAIBLE said the amendment applies a termination date.

SEN. TESTER asked why it was put in the Governor's office. SEN. BARKUS said when the commission was originally formed, because the north fork of the Flathead River originates in British Columbia, the Prime Minister of British Columbia appointed a member of the Basin Commission, which they still do.

SEN. TESTER asked if there are any other commissions like this, and why was it being moved to DNRC. He asked why terminate it if it is a recommendation from the subcommittee. If it doesn't work, they could address it at that time.

SEN. LAIBLE said the reason for the termination date is to have the ability to look at it after two years and see if it is any more effective, or less effective. He felt it better fits in DNRC.

Vote: Motion carried 14-5 with COBB, ESP, NELSON, STONINGTON, and TROPILA voting no.

Motion/Vote: SEN. BARKUS moved that SB 446 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 333

SEN. LAIBLE said the bill takes coal bed methane taxes that go to the general fund, and gives half of it to K-12 and the **University System**.

Motion: SEN. LAIBLE moved that SB 333 DO PASS.

Substitute Motion/Vote: SEN. ESP made a substitute motion that SB 333 BE INDEFINITELY POSTPONED. Substitute motion carried 14-5 with LAIBLE, MCCARTHY, NELSON, and TROPILA voting no.

ADJOURNMENT

Adjournment: 7:40 P.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs69aad)